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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,318	06/25/2003	Beng Sim Chuah	J3676(C)	3089

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EXAMINER	
VANIK, DAVID L	

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 03/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/603,318	CHUAH ET AL.	
	Examiner	Art Unit	
	David L. Vanik	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-44* is/are pending in the application.

4a) Of the above claim(s) *36-44* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2/2/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of the applicant's Information Disclosure Statement filed on 2/2/2004.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

   I. Claims 1-35, drawn to a cosmetic composition, classified in class 424, subclass 489.

   II. Claims 36-42, drawn to a device for dispensing antiperspirant, classified in class 424, subclass 66.

   III. Claim 43, drawn to a process of making a cosmetic product, classified in class 424, subclass 78.03.

   IV. Claims 44, drawn to a method of controlling perspiration, classified in class 424, subclass 65.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I – II and Invention III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be prepared by

blending an antiperspirant active agent, aromatic ester oil, and di or triblock polymers into hydrocarbon oil. The blend can then be heated to 50° to 90° C.

3. Inventions I - II and Invention IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product as claimed can be used to cleanse skin.

3. Inventions I and II are unrelated to one another. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the product of Group I, a cosmetic composition, and the product of Group II, a device for dispensing said cosmetic composition, have different modes of operation and different functions. For example, the function of the composition of Group I is to control perspiration or in some other way cleanse or beatify the skin, whereas the function of the device of Group II is to dispense said composition.

4. Inventions III and IV are unrelated to one another. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04,

MPEP § 808.01). In the instant case, the method of making as set forth in Group III and the method of using as advanced in Group IV have different modes of operation and different functions.

5. Searching the inventions of Groups I – IV together would impose a search burden on the examiner. In the instant case, the search of an antihistamine-based composition and method of using said composition would impose a search burden.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

7. Because these inventions are distinct for the reasons given above and the search required for each subset of Groups I – IV are not required for one another, restriction for examination purposes as indicated is proper.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

During a telephone conversation with Karen Kloomis on 3/8/2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-35. Affirmation of this election must be made by applicant in replying to this Office action. Claims 36-44 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-31 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,403,070 B1 ('070) in view of US Patent 5,221,534 ('534).

'070 teach a deodorant composition comprising a deodorant active agent, such as aluminum or zirconium salts (column 2, lines 30-34), mineral oil (column 3, line 11), and di or triblock copolymers, wherein at least one block copolymer comprises at least one segment derived from styrene (abstract and Examples 1 - 2). The composition advanced by '070 can further comprise a variety of other waxes, such as paraffin waxes and microcrystalline waxes (column 5, lines 40-52). The "structurant system," comprised of wax and di or triblock copolymers, can be in a concentration ranging from 1 – 20% (column 3, lines 2-6). The deodorant active can be in a concentration ranging from 0.1% to 40% and the mineral oil from about 5 – 90% (column 5, lines 26 – 39). It is the examiner's position that modifying and optimizing the proportion of chemical components, based on the particular application, without adversely affecting the skin is within the scope of the skilled artisan. In short, one of ordinary skill in the art at the time the invention was made would have the ability to refine and optimize the composition.

'070 does not teach aromatic ester oil in their deodorant composition. However, '534 teach a composition comprising hydrocarbon oils and mineral oils (column 6, lines 24-33), alkylene/arlene diblock and triblock polymers (Table 1, column 2, lines 34-46, and column 6, lines 24-33), and an aromatic ester oil, such as benzoate ester or

Finsolv™ (column 6, lines 34-44). The composition advanced by '534 can be used as an anti-perspirant (column 7, line 6). According to '534, Finsolv™ can be advantageously used to dilute a gel composition comprising hydrocarbon oils, mineral oils, and alkylene/arlene diblock and triblock polymers to a lotion form. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '070 with '534 and produce a deodorant composition comprising hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, deodorant active agents, and an aromatic ester oil, such as benzoate ester or Finsolv™. The person of ordinary skill in the art would have been motivated to add aromatic ester oil to the deodorant composition advanced by '070 in order to dilute a gel form deodorant to a lotion form. Based on the teachings of '070 and '534, it is expected that the addition of aromatic ester oil to a gel-based deodorant would safely and adequately dilute the gel form to a lotion form.

Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,221,534 ('534) in view of US Patent 5,750,096 A ('096).

'534 teach a composition comprising hydrocarbon oils and mineral oils (column 6, lines 24-33), alkylene/arlene diblock and triblock polymers (Table 1, column 2, lines 34-46, and column 6, lines 24-33), and an aromatic ester oil, such as benzoate ester or Finsolv™ (column 6, lines 34-44). The composition advanced by '534 can be used as an anti-perspirant (column 7, line 6). The "structurant system," comprised of wax and

di or triblock copolymers, can be in a concentration ranging from 1 – 20% (column 6, lines 34-36). Furthermore, according to '534, the proportion of chemicals can be altered based on the desire to produce a fragile, flexible, transparent, translucent or opaque gel (column 6, lines 45-53). It is the examiner's position that modifying and optimizing the proportion of chemical components, based on the particular application, without adversely affecting the skin is within the scope of the skilled artisan. In short, one of ordinary skill in the art at the time the invention was made would have the ability to refine and optimize the composition.

'534 does not teach a composition comprising a particulate antiperspirant active. However, '096 teach a composition comprising from about 0.5 – 60% of an antiperspirant active in the form of particulate solids (column 8, lines 52-65). According to '096, salts of aluminum and zirconium are preferred antiperspirant actives (column 9, lines 9-14). In addition, according to '096, a composition comprising antiperspirant particles of less than 100μm provides a relatively low amount of visible residue performance. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was to combine the teachings of '534 with '096 and produce a deodorant composition comprising hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, particulate deodorant active agents, and an aromatic ester oil, such as benzoate ester or Finsolv™. The person of ordinary skill in the art would have been motivated to add particulate deodorant active agents to the deodorant composition advanced by '534 because a composition comprising antiperspirant

particles of less than 100μm provides a relatively low amount of visible residue. Based on the teachings of '096 and '534, it is expected that the addition of antiperspirant particles to a composition comprising hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, and aromatic ester oils would result in an effective deodorant with a relatively low amount of visible residue performance. Based on the teachings of '096, it is also expected that salts of aluminum and zirconium would be effective antiperspirant actives.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Vanik whose telephone number is (571) 272-3104. The examiner can normally be reached on Monday-Friday 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit 1615

3/14/05

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